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AMENDED IN SENATE MAY 20, 2003

SENATE BILL

No. 96

Introduced by Senator Alpert

(Coauthor: Senator Aanestad)

(Coauthors: Assembly Members Chan, Chavez, and Wolk)

January 28, 2003

An act to amend Sections 116410 and 116415 of, to add Section 116409 to, and to add a heading as Article 3.5 (commencing with Section 116409) to Chapter 4 of Part 12 of Division 104 of, the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

SB 96, as amended, Alpert. Public water systems: fluoridation.

Existing law, the California Safe Drinking Water Act, requires the State Department of Health Services to administer provisions relating to the regulation of drinking water and public water systems and, among other things, to adopt primary drinking water standards for contaminants in drinking water and to monitor regulated and unregulated contaminants.

Existing law, with certain exceptions, requires the department to establish minimum and maximum fluoridation levels applicable to public water systems with at least 10,000 service connections and requires the department to establish a schedule for the fluoridation of

those public water systems based upon the availability of funding related capital and operational costs.

This bill would declare that the purposes of the schedule is not to mandate the order of funding, would exclude from the exemption, systems offered ~~one-year's~~ 12-month's funding for operation and maintenance, *and would exempt systems with multiple water sources and systems with depleted funding that do not have installed operational fluoridation facilities.*

The bill would declare that these provisions are of statewide concern and preempt local regulation, ~~would authorize voluntary compliance,~~ and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. A heading is added as Article 3.5 (commencing
2 with Section 116409) to Chapter 4 of Part 12 of Division 104 of
3 the Health and Safety Code, to read:

4
5 Article 3.5. Fluoridation of Drinking Water

6
7 SEC. 2. Section 116409 is added to the Health and Safety
8 Code, to read:

9 116409. The Legislature finds and declares all of the
10 following:

11 (a) Promotion of the public health of Californians of all ages by
12 protection and maintenance of dental health through the
13 fluoridation of drinking water is a paramount issue of statewide
14 concern.

15 (b) It is the intent of the Legislature in enacting this article to
16 preempt ~~all~~ local government regulations, ordinances, and
17 initiatives ~~relating to that prohibit or restrict~~ the fluoridation of
18 drinking water by public water systems with 10,000 or more
19 service connections, without regard to whether the public water
20 system might otherwise be exempt from Section 116410 or the
21 requirements of this section, pursuant to Section 116415.

22 (c) It is further the intent of the Legislature in establishing this
23 article to decrease the burden the Medi-Cal and the Denti-Cal
24 programs place upon the state's limited funds.

SEC. 3. Section 116410 of the Health and Safety Code is amended to read:

116410. (a) Each public water system with at least 10,000 service connections and with a natural level of fluorides that is less than the minimum established in the regulations adopted pursuant to this section shall be fluoridated in order to promote the public health of Californians of all ages through the protection and maintenance of dental health, a paramount issue of statewide concern. The department shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, requiring the fluoridation of public water systems. By July 1, 1996, and at 10-year intervals thereafter, each public water system with at least 10,000 service connections shall provide to the department an estimate of the total capital costs to install fluoridation treatment. The regulations adopted by the department shall take effect on January 1, 1997. *Capital costs estimates are no longer required after installation of the fluoridation treatment equipment.*

(b) The regulations shall include, but not be limited to, the following:

(1) Minimum and maximum permissible concentrations of fluoride to be maintained by fluoridation of public water systems.

(2) The requirements and procedures for maintaining proper concentrations of fluoride, including equipment, testing, recordkeeping, and reporting.

(3) Requirements for the addition of fluorides to public water systems in which the natural level of fluorides is less than the minimum level established in the regulations.

(4) A schedule for the fluoridation of public water systems with at least 10,000 service connections, based on the lowest capital cost per connection for each system.

(c) The purpose of the schedule established pursuant to paragraph (4) of subdivision (b) is not to mandate the order in which public water systems receiving funding from private sources must fluoridate their water. Available funds may be offered to any system on the schedule.

(d) The estimates provided to the department pursuant to subdivision (a) of this section and subdivision (g) of Section 116415 of the total capital and associated costs and noncapital operation and maintenance costs related to fluoridation treatments

1 and the similar estimates provided to those sources offering to
2 provide the funds set forth in paragraph (1) of subdivision (a) of
3 Section 116415 shall be reasonable, as determined by the
4 department. *A registered civil engineer recognized or employed by*
5 *the department who is familiar with the design, construction,*
6 *operation, and maintenance of fluoridations systems shall*
7 *determine for the department whether the costs are reasonable.*

8 (e) As used in this section and Section 116415, “costs” means
9 only those costs that require an actual expenditure of funds or
10 resources, and do not include costs that are intangible or
11 speculative, including, but not limited to, opportunity or
12 indemnification costs.

13 (f) *Any public water system with multiple water sources, when*
14 *funding is not received to fluoridate all sources, is exempt from*
15 *maintaining otherwise required fluoridations levels in areas*
16 *receiving any nonfluoridated water. The exemption shall be in*
17 *effect only until the public water system receives funding to*
18 *fluoridate the entire water system and the treatment facilities are*
19 *installed and operational.*

20 SEC. 4. Section 116415 of the Health and Safety Code is
21 amended to read:

22 116415. (a) (1) A public water system is not required to
23 fluoridate pursuant to Section 116410, or the regulations adopted
24 thereunder by the department, in ~~either~~ any of the following
25 situations:

26 (A) If the public water system is listed on the schedule to
27 implement a fluoridation program pursuant to paragraph (4) of
28 subdivision (b) of Section 116410 and funds are not offered
29 *pursuant to a binding contractual offer* to the public water system
30 sufficient to pay the capital and associated costs from any ~~source~~
31 *outside source. As used in this section, “outside source” means a*
32 *source* other than the system’s ratepayers, shareholders, local
33 taxpayers, bondholders, or any fees or charges levied by the water
34 system.

35 (B) If the public water system has been offered *pursuant to a*
36 *binding contractual offer* the capital and associated funds
37 necessary for fluoridation as set forth in subparagraph (A) and has
38 completed the installation of a fluoridation system, however, in
39 any given fiscal year (July 1-June 30, inclusive) funding is not
40 available to the public water system sufficient to pay the noncapital



operation and maintenance costs described in subdivision (g) from any *outside* source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system. ~~An~~ *A binding contractual offer to provide funds for one year 12 months, without regard to fiscal year,* of noncapital operation and maintenance costs shall render a water system unqualified for an exemption under this subparagraph *for that year.*

(C) If the funding provided by an outside source for capital and associated costs is depleted prior to completion of the installation of a fluoridation system and funds sufficient to complete the installation have not been offered pursuant to a binding contractual offer to the public water system by an outside source. In the event of a disagreement between the public water system and an outside funding source about the reasonableness of additional capital and associated costs, in order to qualify for an exemption under this subparagraph the costs overruns must be found to be reasonable by a registered civil engineer recognized or employed by the department who is familiar with the design, construction, operation, and maintenance of fluoridation systems.

(2) Each year the department shall prepare and distribute a list of those water systems that do not qualify for exemption under this section from the fluoridation requirements of Section 116410. This list shall include water systems that have been offered, have received, or are expected to receive, sufficient funding for capital and associated costs so as to not qualify for exemption under subparagraph (A) of paragraph (1), and have either (A) been offered or have received, or anticipate receiving, sufficient noncapital maintenance and operation funding pursuant to subdivision (g), or (B) have not yet completed the installation of a fluoridation system, so that they do not qualify for exemption under subparagraph (B) of paragraph (1).

(3) Any water system that has been offered *pursuant to a binding contractual offer* the funds necessary for fluoridation as set forth in subparagraph (A) of paragraph (1), and is not included in the list pursuant to paragraph (2), may elect to exercise the option not to fluoridate during the following fiscal year pursuant to subparagraph (B) of paragraph (1) by so notifying the department by certified mail on or before June 1.

(4) The permit issued by the department for a public water system that is scheduled to implement fluoridation pursuant to paragraph (4) of subdivision (b) of Section 116410 shall specify whether it is required to fluoridate pursuant to Section 116410, or whether it has been granted an exemption pursuant to either subparagraph (A) or subparagraph (B) of paragraph (1).

(b) The department shall enforce Section 116410 and this section, and all regulations adopted pursuant to these sections, unless delegated pursuant to a local primary agreement.

(c) If the owner or operator of any public water system subject to Section 116410 fails, or refuses, to comply with any regulations adopted pursuant to Section 116410, or any order of the department implementing these regulations, the Attorney General shall, upon the request of the department, institute mandamus proceedings, or other appropriate proceedings, in order to compel compliance with the order, rule, or regulation. This remedy shall be in addition to all other authorized remedies or sanctions.

(d) Neither this section nor Section 116410 shall supersede subdivision (b) of Section 116410.

(e) The department shall seek all sources of funding for enforcement of the standards and capital cost requirements established pursuant to this section and Section 116410, including, but not limited to, all of the following:

(1) Federal block grants.

(2) Donations from private foundations.

Expenditures from governmental sources shall be subject to specific appropriation by the Legislature for these purposes.

(f) A public water system with less than 10,000 service connections may elect to comply with the standards, compliance requirements, and regulations for fluoridation established pursuant to this section and Section 116410. ~~A public water system with more than 10,000 service connections that has been granted an exemption pursuant to paragraph (1) of subdivision (a) may also elect to comply with the standards, compliance requirements, and regulations for fluoridation established pursuant to this article and may choose to pay the capital and associated costs and noncapital and maintenance costs set forth in subdivision (g) from any source, including, but not limited to, the public water system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the public water system. Voluntary compliance with the~~

1 ~~regulations shall be evidenced by an affirmative vote of the~~
2 ~~governing body of the public water system.~~

3 (g) Costs, other than capital costs, incurred in complying with
4 this section and Section 116410, including regulations adopted
5 pursuant to those sections, may be paid from federal grants, or
6 donations from private foundations, for these purposes. Each
7 public water system that will incur costs, other than capitalization
8 costs, as a result of compliance with this section and Section
9 116410, shall provide an estimate to the department of the
10 anticipated total annual operations and maintenance costs related
11 to fluoridation treatment by January 1 of each year.

12 (h) A public water system subject to the jurisdiction of the
13 Public Utilities Commission shall be entitled to recover from its
14 customers all of its capital and associated costs, and all of its
15 operation and maintenance expenses associated with compliance
16 with this section and Section 116410. The Public Utilities
17 Commission shall approve rate increases for an owner or operator
18 of a public water system that is subject to its jurisdiction within 45
19 days of the filing of an application or an advice letter, in
20 accordance with the commission's requirements, showing in
21 reasonable detail the amount of additional revenue required to
22 recover the foregoing capital and associated costs, and operation
23 and maintenance expenses.

